



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 7, 2003

Mr. Thomas H. Arnold  
City Attorney  
City of Texarkana  
P.O. Box 1967  
Texarkana, Texas 75504

OR2003-3070

Dear Mr. Arnold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180796.

The Texarkana Police Department (the "department") received a request for the department's payroll reports for the period of January 1, 2000 to February 17, 2003. You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and have reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup> Although you did not claim that any portion of the requested information was excepted from disclosure pursuant to section 552.117 of the Government Code within ten business days of the department's receipt of the written request, we will address your claim under this section since such a claim constitutes a compelling interest sufficient to overcome the existing presumption that any portions of the requested information to which section 552.117 is applicable are now public. *See* Gov't Code §§ 552.301(b), .302; *see also* Open Records Decision Nos. 150 at 2 (1977), 319 (1982).

<sup>2</sup> We note that the document you have submitted states a pay date of March 13, 2003. However, the requestor seeks payroll reports for January 1, 2000 to February 17, 2003, and the submitted information appears to have been generated after the commission received the request for information. Chapter 552 of the Government Code does not require a governmental body to make available information that did not exist at the time the request was received. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 (1986); Open Records Decision No. 362 (1983) (document not within purview of chapter 552 if not in existence at time of request). However, we will treat the submitted information as a representative sample of the information requested. We assume that this sample is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

First, we note that the information you have highlighted as being nonresponsive to the request is part of the requested payroll report. Therefore, we find it to be responsive to the request, and it may only be withheld if one of the exceptions to disclosure under the Public Information Act applies to it.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage that is offered by his employer is a personal investment decision and information about it is excepted from disclosure under the common-law right of privacy. *See* Open Records Decision No. 600 (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). In addition, information related to an individual's mortgage payments, assets, bills, and credit history is excepted from disclosure under the common-law right to privacy. *See* Open Records Decision Nos. 545, 523 (1989). However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. *See* Open Records Decision No. 600 at 10. We have marked the information that is protected by common-law privacy and must be withheld under section 552.101. There is a legitimate public interest in the remaining information, and therefore, it is not protected as private under section 552.101.

Furthermore, section 552.117(2) of the Government Code excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer complies with section 552.024 or 552.1175 of the Government Code.<sup>3</sup> It appears that the individual whose information you have submitted is a peace officer. Thus, we agree that the social security number of the officer must be withheld under

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<sup>3</sup> Section 552.117(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure.

section 552.117(2). You must also withhold the additional information we have marked under section 552.117(2).<sup>4</sup>

In summary, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. A peace officer's social security number must be withheld under section 552.117, along with the additional information we have marked pursuant to that provision. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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<sup>4</sup> We note that if the requested information includes the information of department employees who are not peace officers, the home address, home telephone number, social security number, and family member information of such individuals is excepted from disclosure under section 552.117(1) of the Government Code to the extent that the employees made elections under section 552.024 prior to the date the department received the request. See Gov't Code § 552.117(1). Further, the social security numbers of such individuals may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act. See 42 U.S.C. § 405(c)(2)(C)(viii)(I).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", is written over the typed name.

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 180796

Enc. Submitted documents

c: Ms. Lisa Bose McDermott  
Texarkana Gazette  
P.O. Box 621  
Texarkana, Texas 75504  
(w/o enclosures)